


# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator

## MEMORANDUM

**To:** Julia D'Alesandro, Audit Department  
**From:**  Brent Johnson, General Counsel  
**Re:** Small Claims Actions  
**Date:** June 20, 2002

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This memorandum is in response to your question about whether a court has authority to hear a small claims action if the claimant does not file an affidavit, serve the affidavit, and pay the filing fees. A court does not have jurisdiction or authority in those circumstances.

In Nunley v. Nunley, 757 P.2d 473 (Utah 1988), the court stated that in order for a court to assert jurisdiction over a defendant, a complaint must be filed and a defendant must be effectively served. Without the filing of a complaint, a court does not have a dispute to resolve and without service of a complaint on a defendant, the court does not have jurisdiction over the parties to a dispute. Rule 3 of the Rules of Civil Procedure also confirms this by stating that an action "is commenced by filing a complaint with the court."

The payment of filing fees, or submission of an affidavit of impecuniosity, is also a prerequisite to accepting a complaint or affidavit in many instances. Utah Code Ann. § 63-38-3.3 states that "state and county officers required by law to charge fees may not perform any official service unless the fees prescribed for that service are paid in advance." Thus, state and county courts may not accept an affidavit unless the filing fees are paid. Although this section does not explicitly apply to municipal officers, the same principles should apply to municipal justice courts. The court should only accept the affidavit if the fees are paid. If the affidavit is not accepted, the court does not have jurisdiction.

Please let me know if you have any questions about this matter.

**The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.**